

# Recordkeeping Requirements in Delinquency Cases

## Summary of Contents

4.1	Scope Note .....	1
4.2	Family Division Records .....	1
4.3	Confidential Files .....	2
4.4	Records of Proceedings in Family Division .....	3
4.5	Requirements for Film or Electronic Media Coverage of Court Proceedings.....	3
4.6	Requirements for Closing Delinquency Proceedings to the Public .....	4
4.7	Access to Records of Closed Delinquency Proceedings by Persons With a Legitimate Interest.....	4
4.8	Juvenile Diversion Records .....	4
4.9	Fingerprinting and Photographing of Minors in Family Division Custody .....	6
4.10	Fingerprinting of Juveniles Charged With "Reportable Juvenile Offenses" .....	6
4.11	Recordkeeping Requirements of the Sex Offenders Registration Act.....	9
4.12	DNA Profiling Requirements.....	11
4.13	Required Testing for Venereal Disease and AIDS .....	13

## 4.1 Scope Note

Although this chapter is primarily concerned with recordkeeping requirements for delinquency cases in the Family Division, the material on sex offender registration, DNA profiling, and testing for venereal diseases and AIDS also applies to cases designated for criminal trial in the Family Division, and to "automatic" and "traditional" waiver cases. The applicability of this material outside of delinquency cases is noted in the appropriate sections of this chapter.

## 4.2 Family Division Records

Under MCL 712A.28(2); MSA 27.3178(598.28)(2), and MCR 5.925(D)(1), the general rule is that all records of the juvenile court, other than confidential files, are open to the general public when the proceedings are open to the public. All files created before June 1, 1988, are confidential. MCL 712A.28(1); MSA 27.3178(598.28)(1).

MCR 5.903(A)(9) defines "records" as the pleadings, motions, authorized petitions, notices, memoranda, briefs, exhibits, available transcripts, findings of the court, and court orders. See also AO 1985-5, as amended by 1988-3, Part II, 430 Mich xcix (1988) (contents and purposes of juvenile court case records).

Under MCL 600.1007; MSA 27A.1007, the county clerk is the clerk of the court for the Family Division and keeps the records and indexes of actions. See MCR 8.105 (general duties of clerks).

## 4.3 Confidential Files

### A. Definition of Confidential File

MCR 5.903(A)(18) defines confidential files as all materials made confidential by statute or court rule, including but not limited to:

\*See Section 4.8.

F the diversion record of a minor pursuant to the Juvenile Diversion Act;\*

\*See Section 7.19(A).

F the separate statement about known victims of juvenile offenses as required by MCL 780.784; MSA 28.1287(784), of the Juvenile Crime Victim's Rights Act;\*

\*See Section 4.6.

F the testimony taken during a closed proceeding pursuant to MCR 5.925(A)(2) and MCL 712A.17; MSA 27.3178(598.17); \*

\*See Section 12.6.

F the dispositional reports pursuant to MCR 5.943(C)(3);\*

\*See Section 4.10.

F fingerprinting material required to be maintained for reportable juvenile offenses pursuant to MCL 28.243 et seq.; MSA 4.463 et seq.; \*

F reports of sexually motivated crimes pursuant to MCL 28.247; MSA 4.467(1);

\*See Section 4.13.

F test results of those charged with certain sexual offenses or substance abuse offenses pursuant to MCL 333.5129; MSA 14.15(5129);\* and

F court materials or records that the court has determined to be confidential.

Petitions that the court has not authorized for filing do not fall within the definition of "records" in MCR 5.903(A)(9) and are therefore "confidential files."

### B. Access to Confidential Files by Persons With Legitimate Interest

MCR 5.925(D)(2) states that confidential files shall only be made accessible to persons found by the court to have a legitimate interest. In determining whether a person has a legitimate interest, the court must consider:

F the nature of the proceedings;

F the welfare and safety of the public; and

F the interests of the juvenile.

Court records and confidential files are not subject to requests under the Freedom of Information Act, as the judicial branch of government is specifically exempted from that act. MCL 15.232(b)(v); MSA 4.1801(2)(b)(v).

#### 4.4 Records of Proceedings in Family Division

MCR 5.925(B) requires that a record of all proceedings on the formal calendar be made and preserved by stenographic recording or by mechanical or electronic recording as provided by statute or MCR 8.108. “Formal calendar” means the judicial phases other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing. MCR 5.903(A)(6).

A record of other hearings may be made and preserved by a written memorandum executed by the judge or referee setting forth findings and procedures followed. MCR 5.925(B).\*

\*See Form JC 13.

Note that although proceedings on the formal calendar do not include preliminary hearings, most courts do make recordings of their preliminary hearings.\*

\*See Form JC 09.

If a record of a hearing is made by a recording device, transcription of the hearing is unnecessary unless there is a request by an interested party. The recording remains a permanent record of the court. MCL 712A.17a; MSA 27.3178(598.17a).

#### 4.5 Requirements for Film or Electronic Media Coverage of Court Proceedings

By AO 1989-1, 432 Mich cxii (1989), the Michigan Supreme Court ruled that film or electronic media coverage is permitted in all Michigan courts. All requests for film or electronic media coverage must be allowed if the requests are made at least three business days before the beginning of the proceeding to be filmed. *Id.*, at Part 2(a).\*

\*See Form MC 27.

The Administrative Order does provide the court with some discretion, however. A judge may terminate, suspend, limit, or exclude film or electronic media coverage at any time upon a finding that the fair administration of justice requires such action, or that rules established under the administrative order or additional rules imposed by the judge have been violated. This decision is not appealable. Also, the judge has sole discretion to exclude coverage of certain witnesses, including but not limited to the victims of sex crimes and their families, police informants, undercover agents, and relocated witnesses. *Id.*, at Part 2(b). The judge may bar coverage of jurors and jury selection, and may require members of the media to make pooling arrangements on their own and, in the absence of such arrangements, to bar media coverage.

\*See also Sections 16.32 and 16.39 for requirements for closing designated proceedings to the public and press.

## 4.6 Requirements for Closing Delinquency Proceedings to the Public\*

MCR 5.925(A)(1) provides that, as a general rule, all juvenile court proceedings on the formal calendar and all preliminary hearings shall be open to the public. However, MCL 712A.17(7); MSA 27.3178(598.17)(7), and MCR 5.925(A)(2) allow the court to close proceedings to the general public under limited circumstances. The court, on motion of a party or a victim, may close proceedings to the general public during the testimony of a juvenile witness or a victim to protect the welfare of the juvenile witness or victim. In making such a decision, the court must consider:

- F the age of the juvenile witness or the victim;
- F the psychological maturity of the juvenile witness or the victim;
- F the nature of the proceedings;
- F the desire of the juvenile witness or his or her family or guardian or the desire of the victim to have the testimony taken in a room closed to the public.

\*See Form JC 41.

The court may not close proceedings during the testimony of a juvenile if jurisdiction is requested under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). MCL 712A.17(8); MSA 27.3178(598.17)(8), and MCR 5.925(A)(2).\*

## 4.7 Access to Records of Closed Delinquency Proceedings by Persons With a Legitimate Interest

\*See Section 4.3(B), above (access to confidential files).

If a hearing is closed under MCL 712A.17; MSA 27.3178(598.17), the records of that hearing shall only be open by order of the court to persons having a legitimate interest. MCL 712A.28(2); MSA 27.3178(598.28)(2).\*

Also, MCL 780.799; MSA 28.1287(799), states that, if requested, a victim shall be provided with a certified copy of the order of an adjudicative hearing for purposes of obtaining relief under MCL 600.2913; MSA 27A.2913, which allows recovery of damages in a civil action against the parents of an unemancipated minor who has willfully or maliciously destroyed real or personal property or caused bodily harm or injury to another. See *McKinney v Caball*, 40 Mich App 389, 391 (1972), and *Citizens Ins Co v Lowery*, 159 Mich App 611 (1987).

## 4.8 Juvenile Diversion Records\*

\*See Section 6.3 for a detailed discussion of the Juvenile Diversion Act.

MCL 722.822(c)(i) and (ii); MSA 25.243(52)(C)(i) and (ii), define “diversion” as the placement that occurs when a formally recorded apprehension is made by a law enforcement agency for an act by a minor that if a petition were filed with the Family Division would bring the minor within the jurisdiction of the court under MCL 712A.2(a); MSA 27.3178(598.2)(a) (criminal offenses), but instead of petitioning the court or authorizing a petition, either of the following occurs:

- (i) the minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued, or
- (ii) the minor and the minor's parent, guardian, or custodian agree to work with a person or public or private organization or agency that will assist the minor and the minor's family in resolving the problem that initiated the investigation.

## A. Required Information

Whenever a law enforcement official or court intake worker diverts a minor, the following information must be filed with the Family Division in the county in which the minor resides or is found:

- (a) the minor's name, address, and date of birth;
- (b) the act or offense for which the minor was apprehended;
- (c) the date and place of the act or offense for which the minor was apprehended;
- (d) the diversion decision made, whether referred or released; and
- (e) the nature of the minor's compliance with the diversion agreement.

MCL 722.826(1)(a)–(e); MSA 25.243(56)(1)(a)–(e).\*

\*See Form JC 55.

If a diversion agreement is revoked, the law enforcement official or court intake worker must file with the court the fact of and reasons for the revocation. MCL 722.826(2); MSA 25.243(56)(2).

## B. Confidentiality and Destruction of Required Information

Diversion information must be kept in a separate confidential file that is open to law enforcement agencies and court intake workers only for the purpose of deciding whether to divert a minor. Otherwise, the record is only open by order of the court to persons having a legitimate interest. These records must be destroyed within 28 days after the minor becomes 17 years of age. MCL 722.827–722.829; MSA 25.243(57)–25.243(59).

## C. Confidentiality of Records Created by Juvenile Diversion Officer in His or Her Capacity as Social Worker

In addition to the privilege created by the Juvenile Diversion Act, records created by a juvenile diversion officer in his or her capacity as a social worker are normally protected by the statutory social worker-client privilege, MCL 339.1610; MSA 18.425(1610), *People v Stanaway*, 446 Mich 643, 661 (1994).

\*See Section 16.33 for a discussion of discovery in designated cases.

However, in a criminal case, the trial court should order an in-camera inspection of these communications upon a showing that the “defendant has a good-faith belief, grounded on some demonstrable fact, that there is a reasonable probability that the records are likely to contain material information necessary to the defense.” *Id.*, at 677. See also MCR 6.201(C)(2) (court rule adopts language from *Stanaway*).\*

## 4.9 Fingerprinting and Photographing of Minors in Family Division Custody

\*See Form JC 16.

MCR 5.923(C) provides that the court has discretion to permit fingerprinting or photographing or both of any minor who is in court custody. When so ordered, the fingerprints and photographs must be placed in confidential files capable of being located and destroyed on court order.\*

\*See Section 4.10, below.

In addition, the court must order fingerprinting of a juvenile charged with a “reportable juvenile offense.”\* Notice of fingerprinting retained by the court is confidential. MCR 5.936(A).

## 4.10 Fingerprinting of Juveniles Charged With “Reportable Juvenile Offenses”

### A. Definition of “Reportable Juvenile Offense”

\*See Form MC 233.

MCR 5.936(A), MCL 712A.11(5); MSA 27.3178(598.11)(5), and MCL 28.243(1); MSA 4.463(1) (Bureau of Identification Act), require the court to order the fingerprinting of juveniles who are charged with “reportable juvenile offenses.”\* MCR 5.903(B)(6)(a)–(x) and MCL 28.241a(f); MSA 4.461(1)(f), define “reportable juvenile offenses” as any offense that if committed by a juvenile would be a violation or attempted violation of any of the following:

- F burning a dwelling house, MCL 750.72; MSA 28.267;
- F assault with intent to murder, MCL 750.83; MSA 28.278;
- F assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279;
- F assault with intent to maim, MCL 750.86; MSA 28.281;
- F assault with intent to rob while unarmed, MCL 750.88; MSA 28.283;
- F assault with intent to rob while armed, MCL 750.89; MSA 28.284;
- F attempted murder, MCL 750.91; MSA 28.286;
- F breaking and entering, MCL 750.110; MSA 28.305;
- F first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2);

- F escape or attempted escape from a juvenile facility, MCL 750.186a; MSA 28.383a;
- F first-degree murder, MCL 750.316; MSA 28.548;
- F second-degree murder, MCL 750.317; MSA 28.549;
- F kidnapping, MCL 750.349; MSA 28.581;
- F larceny in a building, MCL 750.360; MSA 28.592;
- F unlawful driving away of an automobile, MCL 750.413; MSA 28.645;
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- F second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);
- F third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
- F assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7);
- F armed robbery, MCL 750.529; MSA 28.797;
- F carjacking, MCL 750.529a; MSA 28.797(a);
- F unarmed robbery, MCL 750.530; MSA 28.798;
- F bank, safe, or vault robbery, MCL 750.531; MSA 28.799; and
- F possession of or manufacture, delivery, or possession with intent to manufacture or deliver 650 grams or more of any Schedule 1 or 2 narcotic or cocaine, MCL 333.7401; MSA 14.15(7401), and MCL 333.7403; MSA 14.15(7403).

MCR 5.936(A) and (B), MCR 5.943(E)(3), MCL 712A.11(5); MSA 27.3178(598.11)(5), and MCL 712A.18(10); MSA 27.3178(598.18)(10), place responsibility on the judge or referee who authorizes the petition to be filed, or who conducts a hearing to make sure that fingerprints are taken when they are required. At the time the court authorizes the filing of a petition alleging a reportable juvenile offense, and before the court enters an order of disposition on a reportable juvenile offense, the court must examine the confidential files to verify that the juvenile has been fingerprinted.

If the juvenile has not been fingerprinted, the judge or referee must:

- (1) direct the juvenile to go to the law enforcement agency involved in the apprehension of the juvenile, or to the sheriff's department, so fingerprints may be taken, or
- (2) issue an order to the sheriff's department to apprehend the juvenile and take the juvenile's fingerprints.

MCR 5.936(B)(1)–(2).

## B. Required Notice to State Police After Case Is Concluded

MCR 5.936(C)(1)–(2) states that the Family Division must notify the Central Records Division of the Department of State Police in writing:

(1) of any juvenile who had been fingerprinted for a reportable juvenile offense and who was found not to be within the jurisdiction of the juvenile court under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), or

(2) that the court took jurisdiction of a juvenile under 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), who was fingerprinted for a reportable juvenile offense specifying the nature of the adjudicated offense, the method of adjudication, and the disposition ordered.

## C. Return of Fingerprints to Juvenile After Certain Case Conclusions

\*See Form MC 235.

MCL 28.243(4)–(5); MSA 4.463(4)–(5), and MCR 5.936(D)(1)–(2) determine what the custodians of a juvenile’s fingerprints\* should do after a case is concluded in one of the following ways:

- F If a petition is not authorized, or if the juvenile is released without being charged, the official taking or holding the juvenile’s fingerprints, arrest card, and description must immediately return this information to the juvenile without the necessity of a request. If this information is not returned, the juvenile has the absolute right to demand its return without having to get a court order.
- F If the juvenile is adjudicated and found not to be within the Family Division’s jurisdiction over criminal offenses, or if following trial the juvenile is found not guilty, the arrest card, fingerprints, and description must also be returned to the juvenile by the person holding the information. If the information is not returned within 60 days of the adjudication or trial, the juvenile has the right to obtain an order from the court for the return of his or her fingerprints, arrest card, and description. If the court order is not complied with, the juvenile has a right to petition the court for a peremptory writ of mandamus.

\*See Sections 6.3(C) (offenses precluding diversion) and 6.3(J) (confidentiality and destruction of required information).

**NOTE:** Three of the “reportable juvenile offenses,” breaking and entering, MCL 750.110; MSA 28.305, larceny in a building, MCL 750.360; MSA 28.592, and unlawfully driving away an automobile, MCL 750.413; MSA 28.645, are also offenses that do not preclude diversion. See MCL 722.822(a); MSA 25.243(52)(a), and MCL 722.823(3); MSA 25.243(53)(3). If the juvenile is diverted for one of these offenses, the provisions governing return and expungement of fingerprint records apply.\*



Under MCL 28.243(9)(a)–(b); MSA 4.463(9)(a)–(b), the above requirements for the return of fingerprints do not apply to:

(a) juveniles charged with a crime against a child under 16 years of age or the crimes of criminal sexual conduct in any degree, sodomy, gross indecency, indecent liberties, or child abusive commercial activities, and

(b) persons with a prior conviction other than a misdemeanor traffic offense, unless a judge of a court of record other than the probate court orders the return.

MCL 28.243(9)(a); MSA 4.463(9)(a), which precludes persons who are acquitted of criminal sexual conduct from obtaining the return of their fingerprint cards, arrest cards, and descriptions from the state police and the arresting police agency does not violate the Equal Protection Clauses of the United States and Michigan Constitutions because denying that return while permitting the return of these documents to persons acquitted of other serious crimes has a rational basis; namely, the particular difficulty in detecting, investigating, and prosecuting criminal sexual conduct offenses. *People v Cooper (After Remand)*, 220 Mich App 368, 374 (1996). See also *People v Pigula*, 202 Mich App 87, 89–91 (1993) (statute does not violate defendant’s right of privacy).

## 4.11 Recordkeeping Requirements of the Sex Offenders Registration Act

### A. Applicability to Juveniles

MCL 712A.18(13); MSA 27.3178(598.18)(13), states that if the Family Division has entered an order of disposition for a “listed offense,” as defined in MCL 28.722; MSA 4.475(2), or an attempt or conspiracy to commit any “listed offense,” the court or the Family Independence Agency must register the juvenile or accept the juvenile’s registration as provided in the Sex Offenders Registration Act, MCL 28.721 et seq.; MSA 4.475(1) et seq.\* Juveniles whose cases have been designated for criminal trial in the Family Division, and juveniles waived to the Criminal Division must also comply with the act.

\*See Michigan State Police Form DD-4.

### B. Conviction Defined

For purposes of the act, “convicted” is defined to include:

(i) having a judgment of conviction or a probation order entered in a court having jurisdiction over criminal offenses, including a conviction subsequently set aside pursuant to MCL 780.621–780.624; MSA 28.1274(101)–28.1274(104);\*

(ii) being assigned to youthful trainee status pursuant to MCL 762.11–762.15; MSA 28.853(11)–28.853(15); and

\*See Section 5.4 (setting aside convictions following designated proceedings).

\*See Section 4.6, above (requirements to close delinquency proceedings).

(iii) having a disposition entered pursuant to MCL 712A.18; MSA 27.3178(598.18), that is open to the general public pursuant to MCL 712A.28; MSA 27.3178(598.28).\*

MCL 28.722(a)(i)–(iii); MSA 4.475(2)(i)–(iii).

### C. Listed Offenses

“Listed Offenses” are the following:

- F accosting children for immoral purposes, MCL 750.145a; MSA 28.341;
- F accosting children for immoral purposes, second offense, MCL 750.145b; MSA 28.342;
- F sexually abusive commercial activity involving children, MCL 750.145c; MSA 28.342a;
- F pandering, MCL 750.455; MSA 28.710;
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- F second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);
- F third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
- F fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5);
- F assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7);
- F a third or subsequent violation of any combination of the following:
  - disorderly person — obscene conduct, MCL 750.167(1)(f); MSA 28.364(1)(f);
  - indecent exposure, MCL 750.335a; MSA 28.567(1);
  - a local ordinance substantially corresponding to either disorderly person — obscene conduct or indecent exposure;
- F an attempt or conspiracy to commit any of these listed offenses; or
- F an offense substantially similar to any of these listed offenses under a law of the United States, any state, or any country.

MCL 28.722(d)(i)–(vi); MSA 4.475(2)(d)(i)–(vi).

## D. Registration Requirements

MCL 28.724(4); MSA 4.475(4)(4), states that for individuals convicted of a listed offense after October 1, 1995, the individual must register before sentencing, entry of an order of disposition, or assignment to youthful trainee status. The probation officer or the court provides the registration form, explains the duty to register, and receives the completed form.\*

\*See Sections 12.26 (dispositions) and 20.44 (sentencing in designated cases).

MCL 28.726; MSA 4.475(6), requires the officer, court, or agency registering an individual, accepting a registration, or receiving notification of a change of address to:

- F provide the individual with a copy of the registration or notice, and
- F forward the registration or notification to the state police via the Law Enforcement Information Network (LEIN) within three business days of receipt.

## E. Confidentiality of Registration Forms

MCL 28.730(1); MSA 4.475(10)(1), states that, subject to MCL 28.728 and 28.730(2)–(3); MSA 4.475(8) and 4.475(10)(2)–(3), a registration is confidential and shall not be open to inspection except for law enforcement purposes. The registration and all included materials and information are exempt from disclosure under MCL 15.243; MSA 4.1801(13), of the Freedom of Information Act.

## 4.12 DNA Profiling Requirements

### A. Persons Required to Provide Samples

An individual convicted of or found responsible for a violation of the following statutes:\*

- F attempted murder, MCL 750.91; MSA 28.286;
- F first-degree murder, MCL 750.316; MSA 28.548;
- F second-degree murder, MCL 750.317; MSA 28.549;

or a violation or attempted violation of the following statutes:

- F kidnapping, MCL 750.349; MSA 28.581;
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- F second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);

\*See Sections 11.26(D) (delinquency adjudications) and 18.22(D) (convictions following designated proceedings).

- F third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
- F fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5);
- F assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7),

\*See Form  
MC 234.

must provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and must provide samples for chemical testing for a determination of his or her secretor status. MCL 712A.18k(1); MSA 27.3178(598.18k)(1), and MCL 750.520m(1); MSA 28.788(13)(1).\*

However, if at the time the individual is convicted or found responsible for the violation, the investigating law enforcement agency, the Department of State Police, or the Family Independence Agency already has a sample from the individual that meets the requirements of the rules promulgated under the DNA identification profiling system act, MCL 28.171–28.176; MSA 4.484(1)–4.484(6), the individual is not required to provide another sample. MCL 712A.18k(1); MSA 27.3178(598.18k)(1), MCL 750.520m(1); MSA 28.788(13)(1), MCL 803.225a(1); MSA 25.399(225a)(1), and MCL 803.307a(1); MSA 25.399(57a)(1).

\*See Sections 15.10  
and 23.14.

## **B. Requirements When Juvenile Is a State Ward\***

A state ward under the jurisdiction of the Family Independence Agency for a violation of the above offenses must not be placed in a community placement of any kind or discharged from wardship until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers, and has provided samples for a determination of his or her secretor status. MCL 803.225a(1); MSA 25.399(225a)(1), and MCL 803.307a(1); MSA 25.399(57a)(1).

The Family Independence Agency may collect a sample regardless of whether the ward consents to the collection, and the agency is not required to give the ward an opportunity for a hearing or obtain a court order before collecting the sample. MCL 803.225a(3); MSA 25.399(225a)(3), and MCL 803.307a(3); MSA 25.399(57a)(3).

## **C. Forwarding of Samples to State Police**

The Family Independence Agency or an investigating law enforcement agency, prosecuting agency, or court that has in its possession a DNA identification profile obtained from a sample of an individual convicted of or found responsible for an offense listed above must forward the DNA identification profile to the Department of State Police at or before the time the court imposes sentence or enters an order of disposition upon that conviction or finding of responsibility unless the Department of State Police already has a DNA identification profile of the individual. MCL 712A.18k(3); MSA 27.3178(598.18k)(3), and MCL 750.520m(3); MSA 28.788(13)(3).

## 4.13 Required Testing for Venereal Disease and AIDS

### A. Mandatory Testing or Examination for Juveniles Bound Over for Trial in Criminal Division

If a defendant is bound over to the Criminal Division for a violation of any of several enumerated offenses, and if the district court determines there is reason to believe the violation involved sexual penetration or exposure to the body fluid of the defendant, the district court must order the defendant to be examined or tested for venereal disease and hepatitis B infection and for the presence of HIV or an antibody to HIV. MCL 333.5129(3); MSA 14.15(5129)(3).

The enumerated offenses are:

- F accosting, enticing, or soliciting child for immoral purposes, MCL 750.145a; MSA 28.341;
- F gross indecency between male persons, MCL 750.338; MSA 28.570;
- F gross indecency between female persons, MCL 750.338a; MSA 28.570(1);
- F gross indecency between male and female persons, MCL 750.338b; MSA 28.570(2);
- F aiding and abetting prostitution, MCL 750.450; MSA 28.705;
- F keeping, maintaining, or operating a house of prostitution, MCL 750.452; MSA 28.707;
- F pandering, MCL 750.455; MSA 28.710;
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- F second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);
- F third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
- F fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5);
- F assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7).

MCL 333.5129(3); MSA 14.15(5129)(3).

**NOTE 1:** Two of the offenses, accosting, enticing, or soliciting child for immoral purposes, MCL 750.145a; MSA 28.341, and aiding and abetting prostitution, MCL 750.450; MSA 28.705, are misdemeanors, for which no bindover would occur.

\*See Section 22.8(C) for detailed information on the bindover decision in “automatic” waiver cases.

Because first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), is a “specified juvenile violation,” this provision is applicable to “automatic” waiver to the Criminal Division under MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), and MCL 600.606; MSA 27A.606, for 14, 15, and 16 year olds.\*

**NOTE 2:** This provision does not apply to “traditional” waiver cases because waived juveniles proceed directly to the Criminal Division for arraignment on an information, not to district court. MCL 712A.4(10); MSA 27.3178(598.4)(10). Nor does it apply to cases that have been designated for criminal proceedings in the Family Division pursuant to MCL 712A.2d; MSA 27.3178(598.2d), because MCL 333.5129(3); MSA 14.15(5129)(3), requires that the juvenile must be bound over to the Criminal Division, whereas in designated proceedings the trial occurs in the Family Division.

## B. Mandatory Testing or Examination Following Juvenile Adjudication or Conviction in Designated Proceedings

\*See Form MC 234.

MCL 333.5129(4); MSA 14.15(5129)(4), states that upon conviction of a defendant or the issuance by the Family Division of an order adjudicating a child to be within the provisions of MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), for a violation of any of the following offenses, the court having jurisdiction of the criminal prosecution or juvenile hearing must order the defendant or child to be examined or tested for venereal disease and hepatitis B infection and for the presence of HIV or an antibody to HIV.\*

\*See Sections 11.26(C) (delinquency adjudications) and 18.22(C) (convictions following designated proceedings).

Thus, testing is mandatory following an adjudication of delinquency or a conviction following a designated proceeding in the Family Division. The court must also order the juvenile or defendant to receive counseling regarding these diseases. MCL 333.5129(2) and (4); MSA 14.15(5129)(2) and (4).\*

The offenses are:

- F accosting, enticing, or soliciting child for immoral purposes, MCL 750.145a; MSA 28.341;
- F gross indecency between male persons, MCL 750.338; MSA 28.570;
- F gross indecency between female persons, MCL 750.338a; MSA 28.570(1);
- F gross indecency between male and female persons, MCL 750.338b; MSA 28.570(2);
- F soliciting prostitution, MCL 750.448; MSA 28.703;
- F admitting to place for purpose of prostitution, MCL 750.449; MSA 28.704;
- F engaging services for purposes of prostitution, MCL 750.449a; MSA 28.704(1);

- F aiding and abetting prostitution, MCL 750.450; MSA 28.705;
- F keeping, maintaining, or operating a house of prostitution, MCL 750.452; MSA 28.707;
- F pandering, MCL 750.455; MSA 28.710;
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);
- F second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);
- F third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
- F fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5);
- F assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7);
- F intravenous use of controlled substance, MCL 333.7404; MSA 14.15(7404); or
- F a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance.

MCL 333.5129(4); MSA 14.15(5129)(4).

### **C. Disclosure of Results to Victim**

In cases involving sexual penetration, sexual contact, or exposure to the defendant's or juvenile's body fluids, if the victim consents, the court must provide the person or agency conducting the mandatory examinations or tests with the name, address, and telephone number of the victim, and the person or agency must notify the victim immediately of the results and refer the victim for appropriate counseling. If the victim is a minor or otherwise incapacitated, the victim's parent, guardian, or person in loco parentis may give the required consent. MCL 333.5129(5); MSA 14.15(5129)(5).

### **D. Confidentiality of Test Results**

Except as provided in MCL 333.5129(1); MSA 14.15(5129)(1) (disclosure by testing agency to defendant and health departments for partner notification), MCL 333.5129(5); MSA 14.15(5129)(5) (victim notification by testing agency), or in MCL 333.5129(6)–(7); MSA 14.15(5129)(6)–(7) (disclosure made part of court record but held confidential), the examinations or tests and results are confidential. All records, reports, and data pertaining to testing, care, treatment, reporting, research, and information pertaining to partner notification under MCL 333.5114a; MSA 14.15(5114a), are also confidential. MCL 333.5131(1); MSA 14.15(5131)(1).

MCL 333.5129(6); MSA 14.15(5129)(6), states that the examination or test results and any other medical information obtained from the defendant or child must be transmitted to the court and, after the defendant or child is sentenced or an order of disposition is entered, made part of the court record, but are confidential and shall be disclosed only to:

- F the defendant or child;
- F the local health department;
- F the state public health department;
- F the victim or person acting for the victim as provided in MCL 333.5129(5); MSA 14.15(5129)(5);
- F to another person upon written authorization of the defendant or child found to be within the provisions of MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), or the child's parent, guardian, or person in loco parentis; and
- F as otherwise provided by law.

MCL 333.5129(7); MSA 14.15(5129)(7), allows for transmission of the examination or test results to the Department of Corrections if the defendant is placed in its custody, and to the relative or public or private agency, institution, or facility with whom a child is placed by the Family Division. A person or agency that receives test results or other medical information pertaining to HIV infection or acquired immunodeficiency syndrome under MCL 333.5129(6)–(7); MSA 14.15(5129)(6)–(7), is subject to the provisions of MCL 333.5131; MSA 14.15(5131), and may only disclose information pursuant to that provision. MCL 333.5129(7); MSA 14.15(5129)(7).

Test results or the fact that testing was ordered to determine the presence of HIV infection or acquired immunodeficiency syndrome are subject to the physician-patient privilege, MCL 600.2157; MSA 27A.2157. MCL 333.5131(2); MSA 14.15(5131)(2).